

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORIO BAUTISTA, on behalf of himself
and others similarly situated,

Case No.: 14 cv 4335
(LGS)

Plaintiff,

-against-

SRISUK, INC. d/b/a BEYOND THAI KITCHEN,
LUANGPUDOO CORP., d/b/a BEYOND THAI KITCHEN,
BEYOND THAI KITCHEN, INC., and/or any other corporate
entity doing business as BEYOND THAI KITCHEN,
located at 133 West 3rd Street, New York, New York,
PANTIPA VEERAPORNPHIMON, and
DARUN LAMNAOTRAKOOON, individually,

Defendants.

PLAINTIFF'S RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiff, Gregorio Bautista (“plaintiff”), in support of his motion for partial summary judgment seeking to establish successor liability against defendants Pantipa Veerapornphimon and the corporate entity she established, Beyond Thai Kitchen, Inc. (collectively, the “the defendants”), after acquiring possession of the restaurant and assuming its operations from the predecessor corporation, Srisuk, Inc. d/b/a Beyond Thai Kitchen, and its purported shareholder Darun Lamnaotrakoon (collectively, “Srisuk”); respectfully submit pursuant to Local Civil Rule 56.1 the following statement of material facts as to which plaintiff contends there is no genuine issue to be tried.

1. Defendant Pantipa Veerapornphimon owns 100% of the shares of defendant Beyond Thai Kitchen, Inc., which is located at 133 West 3rd Street, New York, New York. (Exhibit “A”, p. 8, no. 19; Exhibit “E”, p. 9)¹

¹ Unless otherwise indicated, all Exhibits are annexed to the Declaration of Peter H. Cooper, Esq., dated October 30, 2014, submitted with this Rule 56.1 Statement in support of Plaintiff's motion.

2. Beyond Thai Kitchen purports to have eight (8) employees, including its chef, Ladda Metintanarangsan. (Exhibit "B")

3. Beyond Thai Kitchen, Inc., currently doing business as Beyond Thai Kitchen, purchased the assets of Srisuk, Inc., previously doing business as Beyond Thai Kitchen at the same location, on May 2, 2014. (Exhibit "C")

4. The agreement and bill of sale provides for the transfer from Srisuk, Inc. to Beyond Thai Kitchen, Inc., of all furniture, fixtures, equipment, and other personal properties, all of which were warranted to be in working condition at the time of the closing, at the restaurant doing business as Beyond Thai Kitchen, located at 133 West 3rd Street, New York, New York. (Exhibit "C", Schedule A).

5. Plaintiff was employed as a kitchen helper at Beyond Thai Kitchen continuously between September 2010 and March 2014. (Affidavit of Gregorio Bautista, sworn on October 28, 2014, para. 3)

6. Plaintiff was paid in cash and did not receive a wage statement indicating his hours, his hourly rate, and the wages he was paid on a weekly basis. (Affidavit of Gregorio Bautista, sworn on October 28, 2014, para. 7, 11)

7. Beyond Thai Kitchen has no records of the days or hours worked by plaintiff, or the compensation paid to plaintiff. (Exhibit "D", p. 3, no. 10; p. 8, no. 37, 39)

8. Beyond Thai Kitchen, Inc. does not have a copy of the tax returns of the predecessor corporation. (Exhibit "D", p. 4, no. 15, 16; p. 5-6, no. 26; Exhibit "E", p. 26).

9. The individual purchaser of Beyond Thai Kitchen, Pantipa Veerapornphumon, has never communicated with the prior owner or the prior owner's accountant. (Exhibit "E", p. 14; Exhibit "D", p. 5, no. 23)

10. The monthly rent for Beyond Thai Kitchen, Inc., is presently \$10,506. (Exhibit "F", rider)

11. The purchase price for the restaurant inclusive of all equipment, fixtures and furnishings, on May 2, 2014, as set forth in the Agreement and Bill of Sale, is purported to be ten thousand dollars (\$10,000). (Exhibit "C", p. 2)

12. The current chef, Ladda Metintanarangsan, was present for a routine inspection of the restaurant performed on August 29, 2013. (Exhibit "L")

13. An attorney for the predecessor corporation doing business as "Beyond Thai Kitchen" negotiated on behalf of his client during the period of time between March 25, 2014 and June 16, 2014. (Exhibit "G", "H", "I", and "J")

14. Communications by predecessor corporation included consulting with its accountants regarding making payments to plaintiff herein, and continued through June 2014. (Exhibit "I")

15. Counsel for Srisuk, Inc. drafted a settlement agreement and sent it to counsel for plaintiff on May 7, 2014, five (5) days *after* the purported sale of the business to Beyond Thai Kitchen, Inc. (Exhibit " J")

16. The agreement and bill of sale provides that the Srisuk, Inc. would indemnify Beyond Thai Kitchen, Inc., with respect to any current debt and obligation connected in any way to the transfer of the restaurant that are not paid in full or are not otherwise enumerated in the agreement. (Exhibit "C", p. 3)

17. Srisuk, Inc. had incurred an obligation and / or agreed to pay plaintiff unpaid wages and overtime compensation, prior to the time of sale. (Exhibit "H", "I")

18. In the purchase agreement, Srisuk, Inc. did not warrant that no circumstances exist that would result in a violation of, conflict with, or failure on the part of the seller to conduct the business in compliance with any applicable law. (Exhibit "C")

19. In the purchase agreement, Srisuk, Inc. did not warrant that that it had not received notice regarding any violation of, conflict with, or failure to conduct the business in compliance with any applicable law or that there had been no violations of any law respecting the hiring, hours, wages, occupational safety and health, employment, promotion, termination or benefits of any business employee or other person in connection with the business. (Exhibit "C")

20. The physical appearance, location, phone number, hours of operation and the menu of Beyond Thai Kitchen, Inc. are substantially the same as the physical appearance, location, phone number, hours of operation and the menu of Srisuk, Inc., both having done and/or doing business as Beyond Thai Kitchen, at 133 West 3rd Street, New York, New York. (*compare*, e.g., "Exhibit " M" with affidavit of Gregorio Bautista, sworn on October 28, 2014, Exhibit "A")

Dated: New York, New York
October 30, 2014

Respectfully submitted,

CILENTI & COOPER, PLLC

By: _____

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